

International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO and Engineers Union, Local 444, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO (Paramax Systems Corp.) and Lawrence Ferriso. Case 29-CB-8055

January 13, 1999

SUPPLEMENTAL DECISION AND ORDER

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

On August 27, 1996, the National Labor Relations Board issued a Decision and Order in this case.¹ The Board found, inter alia, that the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers and its Local 444 (the Unions) violated Section 8(b)(1)(A) by failing to provide Charging Party Lawrence Ferriso, a *Beck*² objector, with detailed information concerning the breakdown of the major categories of the Unions' expenses, distinguishing between representational and nonrepresentational expenditures. The Board also found that, based on its reasoning in *California Saw & Knife Works*,³ a union's duty of fair representation does not extend to requiring that an independent auditor verify the expenditure information provided to objecting nonmembers.

On September 23, 1997, the United States Court of Appeals for the District of Columbia Circuit issued a decision rejecting the Board's finding that the Unions were not required to have the information provided to objecting nonmembers verified by an independent auditor. *Ferriso v. NLRB*, 125 F.3d 865 (D.C. Cir. 1997). The court found that "the Board's rejection of the 'independent auditor' requirement was not rational, because any rational interpretation of the NLRA's duty of fair representation will necessarily include an independent-auditor requirement." *Id.* at 869. Relying on *Chicago Teachers Union, Local 1 v. Hudson*, 475 U.S. 292 (1986), the court found that "adequate disclosure surely would include the major categories of expenses, as well as verification by an independent auditor." *Id.*, quoting 475 U.S. at 307 fn. 18.

The court rejected Ferriso's argument that all audits must be performed by certified public accountants (CPAs). Rather, the appeals court instructed the Board to "order that the Unions provide Ferriso with an independent audit of their financial data, and that the independence and qualifications of the auditors conform to prevailing norms for audits of comparable entities." *Id.* at 873.

¹ 322 NLRB 1.

² *Communications Workers of America v. Beck*, 487 U.S. 735 (1988).

³ *California Saw & Knife Works*, 320 NLRB 224 (1995), enf'd. 133 F.3d 1012 (7th Cir. 1998), cert. denied 525 U.S. 813 (1998).

On August 4, 1998, the Board advised the parties that it had accepted the court's remand and invited statements of position. The Respondent Unions, the Acting General Counsel, and the Charging Party each filed a position statement. In all three statements of position, the parties agree that the Board should modify its Decision and Order in the manner prescribed by the court of appeals. The parties also unanimously agree that, at this stage of the proceedings, the Board should not decide precisely what "independence and qualifications of the auditors conform to prevailing norms for audits of comparable entities." Instead, the parties urge the Board to leave to the compliance stage, if necessary, a determination of this issue.⁴ We will do so.

We accept the court's holding as the law of the case, and we shall modify the Order to require that the Respondents provide Charging Party Ferriso with detailed information concerning the breakdown of the major categories of its expenditures and to have that financial information verified by an independent auditor.

ORDER

The National Labor Relations Board reaffirms its Order in the underlying proceeding, 322 NLRB 1 (1996), as modified and set forth in full below, and orders that the Respondents, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO, and Engineers Union, Local 444, International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO, their officers, agents, and representatives, shall

1. Cease and desist from

(a) Providing nonmember objectors with financial information which is insufficient for them to make an informed choice as to whether to file a challenge to any of the expenses incurred by the Respondents.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

(a) Provide Lawrence Ferriso and all other objecting nonmembers with detailed information which has been verified by an independent auditor whose independence and qualifications shall conform to prevailing norms for audits of comparable entities, concerning the breakdown of the major categories of expenses, distinguishing between representational and nonrepresentational expenditures of the Respondents.

(b) Refund, with interest, all fees and assessments paid by Lawrence Ferriso which were not properly chargeable to him within the meaning of *Communications Workers*

⁴ The adequacy of the Respondents' disclosure pursuant to this Order can be ascertained in compliance proceedings, at which time a full record can be developed.

of *America v. Beck*, 487 U.S. 735 (1988), as expenditures for collective-bargaining purposes.

(c) Within 14 days after service by the Region, post at their offices copies of the attached notice marked "Appendix."⁵ Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Mail a copy of the notice to the Charging Party.

(e) Forward to the Regional Director for Region 29 signed copies of the notice sufficient in number for the Employer, if willing, to post at its facility.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

⁵ If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail to provide objecting nonmembers with proper information which is sufficient for them to make an informed choice as to whether to file a challenge to any of the expenses incurred by us.

WE WILL NOT in any like or related manner restrain or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL provide Lawrence Ferriso and all other objecting nonmembers with detailed information, which has been verified by an independent auditor whose independence and qualifications shall conform to prevailing norms for audits of comparable entities, concerning the breakdown of our major categories of expenses, distinguishing between representational and nonrepresentational expenses.

WE WILL refund, with interest, all fees and assessments paid by Lawrence Ferriso which were not properly chargeable to him within the meaning of *Communications Workers of America v. Beck*, 487 U.S. 735 (1988), as expenditures for collective-bargaining purposes.

INTERNATIONAL UNION OF
ELECTRONIC, ELECTRICAL, SALARIED,
MACHINE AND FURNITURE WORKERS,
AFL-CIO

ENGINEERS UNION, LOCAL 444,
INTERNATIONAL UNION OF
ELECTRONIC, ELECTRICAL, SALARIED,
MACHINE AND FURNITURE WORKERS,
AFL-CIO